

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:08-cr-00016-MR**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW JAMES DURY,

Defendant.

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ORDER

THIS MATTER is before the Court on the Defendant's "Motion to Withdraw Guilty Plea . . ." [Doc. 52]; the Defendant's "Motion of Entry of Default of Document 52" [Doc. 54]; the Defendant's second "Motion to Withdraw Guilty Plea . . ." [Doc. 55]; the Defendant's letter dated April 22, 2015 [Doc. 56]; and the Defendant's "Motion for Default Judgment" [Doc. 57].

On April 28, 2008, the Defendant pled guilty pursuant to a written plea agreement to one count of receiving child pornography, in violation of 18 U.S.C. §§ 2252(a)(2) and (b)(1). [See Doc. 12]. In exchange for the concessions made by the Government in the plea agreement, the Defendant agreed to waive all rights to contest his conviction and sentence except for claims of ineffective assistance of counsel, prosecutorial misconduct, or the

reasonableness of any upward variances from the applicable Guideline range. [Doc. 11 at 4].

The Defendant appeared for sentencing before the Honorable Lacy H. Thornburg, United States District Judge¹, on September 4, 2008. The Court determined that the Defendant had engaged in a pattern of activity involving the sexual abuse or exploitation of a minor and consequently enhanced the Defendant's offense level five levels pursuant to U.S.S.G. § 2G2.2(b)(5). The Court sentenced the Defendant to a term of 204 months' imprisonment, which fell within his advisory Guidelines range. [Doc. 18]. The Defendant appealed, arguing that the court erred in applying the § 2G2(b)(5) enhancement. The Court of Appeals for the Fourth Circuit found no error in the application of the enhancement, and therefore affirmed the Defendant's conviction. The Fourth Circuit, however, found the Court's explanation of its exercise of discretionary sentencing authority to be inadequate and therefore vacated the Defendant's sentence and remanded the case for resentencing. United States v. Dury, No. 08-4897 (4th Cir. July 10, 2009).

¹ Upon Judge Thornburg's retirement, this matter was reassigned the undersigned.

On remand, the Court conducted a resentencing hearing and imposed the same term of imprisonment on the Defendant. [Doc. 30]. The Defendant did not file a direct appeal.

On November 2, 2012, the Defendant filed a motion to vacate pursuant to 28 U.S.C. § 2255 [Doc. 33], which the Court denied [Doc. 47]. The Defendant appealed, but the Fourth Circuit denied a certificate of appealability and dismissed his appeal. United States v. Dury, No. 14-6879 (4th Cir. Nov. 6, 2014). The Defendant also filed a series of motions, generally challenging the Court's jurisdiction and demanding a jury trial. [See Docs. 32, 38, 39, 45]. The Court denied these motions on December 12, 2013. [Doc. 46].

The Defendant now returns to this Court, seeking to withdraw his guilty plea and seeking the entry of a default judgment against the Government for failing to respond to his motion. As grounds for the basis for the withdrawal of his guilty plea, the Defendant argues that he voided the plea agreement by filing his direct appeal and post-conviction motion to vacate.

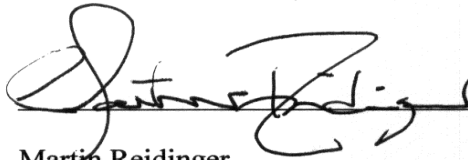
While the Defendant may have breached his plea agreement by challenging his conviction and sentence on grounds other than those excepted by the appellate waiver, his actions did not void his otherwise valid

plea of guilty. The Defendant's argument on this point is frivolous, and therefore his motion to withdraw his guilty plea is denied.

IT IS, THEREFORE, ORDERED that the Defendant's "Motion to Withdraw Guilty Plea . . ." [Doc. 52]; the Defendant's "Motion of Entry of Default of Document 52" [Doc. 54]; the Defendant's second "Motion to Withdraw Guilty Plea . . ." [Doc. 55]; and the Defendant's "Motion for Default Judgment" [Doc. 57] are **DENIED**.

IT IS SO ORDERED.

Signed: May 13, 2015


Martin Reidinger
United States District Judge

